



6727-01-U

## **FEDERAL LABOR RELATIONS AUTHORITY**

### **5 CFR Parts 2423, 2424, 2425, and 2429**

#### **Unfair Labor Practice Proceedings; Negotiability Proceedings; Review of Arbitration Awards; Miscellaneous and General Requirements**

**AGENCY:** Federal Labor Relations Authority

**ACTION:** Final rule

**SUMMARY:** The Federal Labor Relations Authority (the FLRA) is engaged in an initiative to make electronic filing, or "eFiling," available to parties in all cases before the FLRA. Making eFiling available to its parties is another way in which the FLRA is using technology to improve the customer-service experience. Efilng also is expected to increase efficiencies by reducing procedural filing errors and resulting processing delays.

**EFFECTIVE DATE:** [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].

**ADDRESSES:** Written comments can be e-mailed to [engagetheflra@flra.gov](mailto:engagetheflra@flra.gov) or sent to the Case Intake and Publication Office, Federal Labor Relations Authority, Suite 200, 1400 K Street, N.W., Washington, DC 20424-0001. All written comments will be available for public inspection during normal business hours at the Case Intake and Publication Office.

**FOR FURTHER INFORMATION CONTACT:** Sarah Whittle Spooner, Counsel for Regulatory and External Affairs, (202) 218-7791; or e-mail: [engagetheflra@flra.gov](mailto:engagetheflra@flra.gov).

#### **SUPPLEMENTARY INFORMATION:**

In the first stage of its eFiling initiative, the FLRA enabled parties to use eFiling to file requests for Federal Service Impasses Panel assistance in the resolution of negotiation impasses. *See* 77 FR 5987 (Feb. 7, 2012).

This final rule accompanies the second of three stages of the FLRA's eFiling initiative. In this stage, parties will be able to use the FLRA's eFiling system to electronically file 11 types of documents in cases that are filed with the FLRA's three-Member adjudicatory body, the Authority. This rule modifies the FLRA's existing regulations to allow for eFiling of such documents, clarifies some of the FLRA's procedural regulations, and explains how to calculate the due date for filing when parties are served with documents by more than one method. In addition, the rule provides that parties may use electronic mail ("e-mail") to serve one another, but only if the served party agrees to e-mail service. Further, it modifies 5 CFR 2423.40(a)(3) to conform to 5 CFR 2429.29, and deletes the statement in 5 CFR 2429.24 that provides for parties filing carbon copies of typewritten material.

As the FLRA's eFiling procedures develop, the revisions set forth in this action may be evaluated and revised further.

## **Sectional Analyses**

Sectional analyses of the amendments and revisions to part 2423, Unfair Labor Practice Proceedings, part 2424, Negotiability Proceedings, part 2425, Review of Arbitration Awards, and part 2429, Miscellaneous and General Requirements, are as follows:

### **Part 2423 – Unfair Labor Practice Proceedings**

#### *Section 2423.0.*

This section is amended to state that part 2423 is applicable to any unfair labor practice cases that are pending or filed with the FLRA on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Section 2423.6.*

This section is amended to state that a charging party in an unfair labor practice case may serve the charge on the charged party by e-mail, but only if the charged party has agreed to e-mail service.

*Section 2423.40.*

Paragraph (a)(3) of this section, which requires a table of contents and table of authorities for exceptions containing 25 or more pages, is amended to eliminate the reference to a table of contents. While a table of contents is still required under 5 CFR 2429.29, the table of contents requirement in this section is inconsistent with 5 CFR 2429.29, which requires a table of contents for documents exceeding 10 double-spaced pages.

**Part 2424 – Negotiability Proceedings**

*Section 2424.1.*

This section is amended to state that part 2424 is applicable to all petitions for review filed on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Section 2424.22.*

Paragraph (b) of this section is amended to state that a petition for review filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a petition need not be dated if it is eFiled. Paragraph (b) also is amended to state that copies of petition forms are available on the FLRA's Web site. Finally, paragraph (b)(2) is amended to state that documents submitted along with a petition may be uploaded as attachments in the eFiling system if the exclusive representative eFiles its petition.

*Section 2424.24.*

Paragraph (c) of this section is amended to state that a statement of position filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a statement need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of statement forms are available on the FLRA's Web site. Finally, paragraph (c)(2) is amended to state that documents submitted along with a statement may be uploaded as attachments in the eFiling system if the agency eFiles its statement.

*Section 2424.25.*

Paragraph (c) of this section is amended to state that a response filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a response need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of response forms are available on the FLRA's Web site. Finally, paragraph (c)(1) is amended to state that documents submitted along with a response may be uploaded as attachments in the FLRA's eFiling system if the exclusive representative eFiles its response.

*Section 2424.26.*

Paragraph (c) of this section is amended to state that a reply filed electronically through use of the FLRA's eFiling system satisfies the content requirements of this paragraph, and that a reply need not be dated if it is eFiled. Paragraph (c) also is amended to state that copies of reply forms are available on the FLRA's Web site. Finally, paragraph (c) is amended to state that documents submitted along with a reply may be uploaded as attachments in the FLRA's eFiling system if the agency eFiles its reply.

**Part 2425 – Review of Arbitration Awards**

*Section 2425.1.*

This section is amended to state that part 2425 is applicable to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Section 2425.4.*

Paragraph (a) of this section is amended to state that arbitration exceptions filed electronically through use of the FLRA's eFiling system need not be dated. In addition, paragraph (a)(3) of this section is amended to provide that documents may be uploaded as attachments in the FLRA's eFiling system if the excepting party uses that system to file exceptions.

Paragraph (d) of this section is amended to provide that an exception form is provided on the FLRA's Web site, and that filing an exception electronically through use of the FLRA's eFiling system complies with the formatting requirements of this paragraph.

*Section 2425.5.*

This section is amended to provide that an opposition form is provided on the FLRA's Web site. It also is amended to provide that filing an opposition electronically through use of the FLRA's eFiling system complies with the formatting requirements of this section, and that documents may be uploaded as attachments in the eFiling system if the opposing party uses that system to file an opposition.

**Part 2429 – Miscellaneous and General Requirements**

*Section 2429.21.*

This section is renamed, "How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed."

Paragraph (a) of this section is renamed, “How to compute the due date for filing documents with the FLRA,” and is revised to clarify the existing rules regarding how to calculate the due date for filing documents with the FLRA. Paragraph (a)(1) is revised to specify that, if the last day of the filing period falls on a Saturday, Sunday, or federal legal holiday, then the due date falls to the next day that is not a Saturday, Sunday, or federal legal holiday, even if the party is eFiling.

Paragraph (b) of this section is renamed, “How the FLRA determines the date on which documents have been filed,” and is revised to clarify the existing rules regarding how the FLRA determines the date on which a party has filed documents. Paragraph (b)(1)(v) adds that, if a party files documents electronically through use of the FLRA’s eFiling system, then the date of filing is the calendar day (including Saturdays, Sundays, and federal legal holidays) on which the document is transmitted in the eFiling system. It also notes that, consistent with paragraph (a)(1)(v), an eFiled document is not required to be filed on a Saturday, Sunday, or federal legal holiday.

*Section 2429.22.*

This section is renamed, “Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery,” and is divided into paragraphs.

Paragraph (a) of this section, “General rules,” clarifies the existing, general rules regarding adding 5 days to the filing period when a party is filing in response to a document that has been served on that party by first-class mail or commercial delivery.

Paragraph (b) of this section, “Rules that apply when you have been served by more than one method,” explains the rules that apply when a filing party is filing in response to a document

that has been served on that party by more than one method. It provides that, as a general rule, the first method of service is controlling for purposes of determining the due date for a responsive filing. It also provides that the filing party is entitled to the additional 5 days only if first-class mail or commercial delivery is the first method of service. It further provides that, if a party is served by first-class mail or commercial delivery on one day, and served by any method other than first-class mail or commercial delivery on the same day, then the party may not add 5 days – even if the served document was postmarked or deposited with a commercial-delivery service earlier in the day than the other method(s) of transmission.

Paragraph (c) of this section, “Exception for applications for review filed under 5 CFR 2422.31,” restates an existing rule that a filing party does not receive an extra 5 days to file an application for review under 5 CFR 2422.31.

Paragraph (d) of this section, “Exception where extension of time has been granted,” restates an existing rule that a filing party does not get an extra 5 days if that party already has received an extension of time.

Paragraph (e) of this section, “Rules that apply to exceptions to arbitration awards,” refers the reader to 5 CFR 2425.2(c) for rules that apply when a party is filing exceptions to an arbitration award.

#### *Section 2429.24.*

Paragraph (a) of this section is amended to clarify that the rules in paragraph (a) apply to documents filed with the Authority, and not documents filed with the General Counsel, a Regional Director, or an Administrative Law Judge. It also is amended to clarify that the times discussed in the paragraph are Eastern Time (“E.T.”). Further, it is amended to provide that documents that are filed electronically through use of the FLRA’s eFiling system may be filed on

any calendar day – including Saturdays, Sundays, and federal legal holidays, although they are not required to be filed on those days – and will be considered filed on a particular day if they are filed by midnight E.T. that day. Finally, paragraph (a) is amended to clarify that documents may not be filed with the Authority by e-mail.

Paragraph (e) of this section is amended to provide that the general rule in the first sentence of existing paragraph (e) is subject to new paragraphs (f) and (g), and to move the existing exceptions discussed in current paragraph (e) to paragraph (g).

New paragraph (f) of this section provides that, as an alternative to filing by the methods discussed in paragraph (e), a party may file the following 11 types of documents electronically through use of the FLRA’s eFiling service: (1) applications for review under 5 CFR 2422.31(a)-(c); (2) oppositions to applications for review under 5 CFR 2422.31(d); (3) exceptions to Administrative Law Judges’ decisions under 5 CFR 2423.40(a); (4) oppositions to exceptions to Administrative Law Judges’ decisions under 5 CFR 2423.40(b); (5) cross-exceptions under 5 CFR 2423.40(b); (6) exclusive representatives’ petitions for review under 5 CFR 2424.22; (7) agency statements of position under 5 CFR 2424.24; (8) exclusive representatives’ responses under 5 CFR 2424.25; (9) agency replies under 5 CFR 2424.26; (10) exceptions to arbitration awards under 5 CFR part 2425; and (11) oppositions to exceptions to arbitration awards under 5 CFR part 2425.

New paragraphs (g)(1)-(4) of this section clarify the existing rules (currently in paragraph (e)) for filing certain documents by facsimile.

New paragraph (h) of this section restates an existing requirement (currently in paragraph (f)) that matters filed under § 2429.24 be legibly printed, typed, or otherwise duplicated. It also deletes the sentence, “Carbon copies of typewritten matter will be accepted if they are clearly

legible,” as parties generally do not submit such carbon copies. Further, new paragraph (h) provides that, for purposes of documents that are filed electronically through use of the eFiling system, “legibly duplicated” means that documents that are uploaded as attachments in the eFiling system must be legible.

Paragraph (i) of this section restates, more clearly, existing wording (currently in paragraph (g)).

Paragraph (j) of this section restates existing paragraph (h) and adds that, for documents that are eFiled, the documents must contain the mailing address, e-mail address, and telephone number of the individual who is filing the document, but not that individual’s signature.

Paragraph (k) of this section restates and clarifies existing paragraph (i).

#### *Section 2429.25.*

This section is revised and divided into paragraphs.

New paragraph (a) of this section, “General rule,” restates and clarifies the existing, general rule regarding the number of copies and paper size of documents that are filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer. It also provides that the general rule is subject to the exceptions set forth in new paragraph (b).

New paragraph (b)(1), (3), and (4) of this section restate and clarify the existing exceptions to the general rule that is now set forth in paragraph (a). New paragraph (b)(2) adds a new exception for documents that are filed electronically through use of the FLRA’s eFiling system.

#### *Section 2429.27.*

Paragraph (b) of this section is revised and divided into paragraphs (1) through (6). Paragraphs (1) through (5) restate existing, authorized methods of service. Paragraph (6) states

that parties may serve one another by e-mail, but only if the receiving party agrees to e-mail service.

Paragraph (c) of this section clarifies the existing requirements regarding filing statements of service with the FLRA. It also states that, for documents that are eFiled, the filing party or individual must certify, in the eFiling system and at the time of filing, that copies of the filing and any supporting documents have been served on the appropriate individuals specified in § 2429.27(a). Finally, paragraph (c) provides that statements of service must be signed and dated, unless they are eFiled.

Paragraph (d) of this section clarifies the existing rules regarding calculating the date of service, and adds that, for documents served by e-mail, the date of service is the date on which the documents were transmitted by e-mail.

#### *Section 2429.29.*

This section is amended to provide that the existing table-of-contents requirement for documents exceeding 10 double-spaced pages in length applies to briefs that are uploaded as attachments in the eFiling system, but that a party using the fillable forms on the FLRA's eFiling system is not required to submit a separate table of contents.

### **Executive Order 12866**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

### **Executive Order 13132**

The FLRA is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

### **Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the FLRA has determined that this rule, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies only to federal agencies, federal employees, and labor organizations representing those employees.

#### **Unfunded Mandates Reform Act of 1995**

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **Paperwork Reduction Act of 1995**

The amended regulations contain no additional information collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Parts 2423, 2424, 2425, and 2429

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR Parts 2423, 2424, 2425, as follows:

**PART 2423- [AMENDED]**

- 1. The authority citation for part 2423 continues to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

- 2. Section 2423.0 is revised to read as follows:

**§ 2423.0 Applicability of this part.**

This part applies to any unfair labor practice cases that are pending or filed with the FLRA on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

- 3. Section 2423.6 is amended by revising paragraph (d) to read as follows:

**§ 2423.6 Filing and service of copies.**

\* \* \* \* \*

(d) Service of the charge. You must serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, you may serve the charge by facsimile transmission, as paragraph (c) of this section discusses. Alternatively, you may serve the charge by electronic mail (“e-mail”), but only if the Charged Party has agreed to be served by e-mail. The Region routinely serves a copy of the charge on the Charged Party, but you remain responsible for serving the charge, consistent with the requirements in this paragraph.

- 4. Section 2423.40 is amended by revising paragraph (a)(3) to read as follows:

**§ 2423.40 Exceptions; oppositions and cross-exceptions; oppositions to cross-exceptions; waiver.**

(a) \* \* \*

(3) Exceptions containing 25 or more pages shall include a table of legal authorities cited.

\* \* \* \* \*

**PART 2424- [AMENDED]**

- 5. The authority citation for part 2424 continues to read as follows:

Authority: 5 U.S.C. 7134.

- 6. Section 2424.1 is revised to read as follows:

**§ 2424.1 Applicability of this part.**

This part applies to all petitions for review filed on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

- 7. Section 2424.22 is amended to revise paragraphs (b) introductory text and (b)(2) to read as follows:

**§ 2424.22 Exclusive representative's petition for review; purpose; content; severance; service.**

\* \* \* \* \*

(b) *Content.* You must file a petition for review on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your petition electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). That Web site also provides copies of petition forms. You must date the petition, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file the petition, you must ensure that it includes the following:

\* \* \* \* \*

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on in your argument or that you reference in the proposal or provision, and a copy of any such material that the Authority cannot easily access (which you may upload as attachments if you file the petition electronically through use of the FLRA's eFiling system);

\* \* \* \* \*

- 8. Section 2424.24 is amended by revising paragraphs (c) introductory text and (c)(2) introductory text to read as follows:

**§ 2424.24 Agency's statement of position; purpose; time limits; content; severance; service.**

\* \* \* \* \*

(c) *Content.* You must file your statement of position on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your statement electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). That Web site also provides copies of statement forms. You must date your statement, unless you file it electronically through use of the eFiling system. And, regardless of how you file your statement, your statement must:

\* \* \* \* \*

(2) Set forth in full your position on any matters relevant to the petition that you want the Authority to consider in reaching its decision, including: a statement of the arguments and authorities supporting any bargaining obligation or negotiability claims; any disagreement with claims that the exclusive representative made in the petition for review; specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority that you

rely on; and a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your statement of position electronically through use of the FLRA's eFiling system). Your statement of position must also include the following:

\* \* \* \* \*

- 9. Section 2424.25 is amended by revising paragraphs (c) introductory text and (c)(1) introductory text to read as follows:

**§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.**

\* \* \* \* \*

(c) *Content.* You must file your response on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your response electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). That Web site also provides copies of response forms. With the exception of a request for severance under paragraph (d) of this section, you must limit your response to the matters that the agency raised in its statement of position. You must date your response, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your response, you must ensure that it includes the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. You must: state the arguments and authorities supporting your opposition to any agency argument; include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority on which you rely; and provide a copy of any such material that the Authority may not easily access (which you may upload as attachments if you file your response electronically through use of the FLRA's eFiling system). You are not required to repeat

arguments that you made in your petition for review. If not included in the petition for review, then you must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

\* \* \* \* \*

- 10. Section 2424.26 is amended by revising paragraph (c) introductory text to read as follows:

**§ 2424.26 Agency's reply; purpose; time limits; content; service.**

\* \* \* \* \*

(c) *Content.* You must file your reply on a form that the Authority has provided for that purpose, or in a substantially similar format. You meet this requirement if you file your reply electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). That Web site also provides copies of reply forms. You must limit your reply to matters that the exclusive representative raised for the first time in its response. Your reply must: state the arguments and authorities supporting your position; cite with specificity any law, rule, regulation, section of a collective bargaining agreement, or other authority that you rely on; and provide a copy of any material that the Authority may not easily access (which you may upload as attachments if you file your reply electronically through use of the FLRA's eFiling system). You must date your reply, unless you file it electronically through use of the FLRA's eFiling system. And, regardless of how you file your reply, you must ensure that it includes the following:

\* \* \* \* \*

## **PART 2425- [AMENDED]**

- 11. The authority citation for part 2425 continues to read as follows:

Authority: 5 U.S.C. 7134.

- 12. Section 2425.1 is revised to read as follows:

### **§ 2425.1 Applicability of this part.**

This part applies to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

- 13. Section 2425.4 is amended to revise paragraphs (a) introductory text, (a)(3), and (d) to read as follows:

### **§ 2425.4 Content and format of exceptions.**

(a) *What is required.* You must date your exception, unless you file it electronically through use of the eFiling system on the FLRA's Web site at [www.flra.gov](http://www.flra.gov). Regardless of how you file your exception, you must ensure that it is self-contained and that it sets forth, in full, the following:

\* \* \* \* \*

(3) Legible copies of any documents (which you may upload as attachments if you file electronically through use of the FLRA's eFiling system) that you reference in the arguments discussed in paragraph (a)(2) of this section, and that the Authority cannot easily access (such as internal agency regulations or provisions of collective bargaining agreements);

\* \* \* \* \*

(d) *Format.* You may file your exception on an optional form that is available on the FLRA's Web site at [www.flra.gov](http://www.flra.gov), or in any other format that is consistent with paragraphs (a) and (c) of this section. You meet this requirement if you file your exception electronically through use of

the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your exception.

- 14. Section 2425.5 is revised to read as follows:

**§ 2425.5 Content and format of opposition.**

If you choose to file an opposition, then you may file your opposition on an optional form that is available on the FLRA's Web site at [www.flra.gov](http://www.flra.gov), or in any other format that is consistent with this section. You meet this requirement if you file your opposition electronically through use of the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your opposition. If you choose to file an opposition, and you dispute any assertions that have been made in the exceptions, then you should address those assertions – including any assertions that any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. If the excepting party has requested an expedited, abbreviated decision under § 2425.7 of this part, then you should state whether you support or oppose such a decision and provide supporting arguments. You must provide copies of any documents upon which you rely (which you may upload as attachments if you file your opposition electronically through use of the FLRA's eFiling system), unless the Authority can easily access those documents (as discussed in § 2425.4(b) of this part) or the excepting party provided them with its exceptions.

**PART 2429- [AMENDED]**

- 15. The authority citation for part 2429 continues to read as follows:

Authority: 5 U.S.C. 7134; § 2429.18 also issued under 28 U.S.C. 2112(a).

- 16. Section 2429.21 is revised to read as follows:

**§ 2429.21 How to compute the due date for filing documents with the FLRA; how the FLRA determines the date on which documents have been filed.**

(a) *How to compute the due date for filing documents with the FLRA.* In computing the due date for filing any document with the FLRA under this subchapter, follow these rules:

(1) *General rules.* Except in the situations discussed in paragraphs (a)(2) and (3) of this section, follow these steps in order to determine the date on which you must file any document with the FLRA.

(i) *Step 1:* Determine the act, event, or default (“the triggering event”) that you are filing in response to. The act, event, or default constitutes the triggering event even if it falls on a Saturday, Sunday, or federal legal holiday.

(ii) *Step 2:* Determine the number of days that you have to file (“the filing period”).

(iii) *Step 3:* Determine the first day of the filing period. This is the day after, not the day of, the triggering event, and constitutes the first day of the filing period even if it is a Saturday, Sunday, or federal legal holiday.

(iv) *Step 4:* Starting with the first day of the filing period, count calendar days – including Saturdays, Sundays, and federal legal holidays – until you reach the last day of the filing period (“the last day”).

(v) *Step 5:* Ask: Does the last day fall on a Saturday, Sunday, or federal legal holiday? If no, then your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22). If yes, then find the next day on the calendar that is not a Saturday, Sunday, or federal legal holiday. Your filing is due on that day (unless you are entitled to an additional 5 days under § 2429.22), even if you are filing electronically through use of the eFiling system on the FLRA’s Web site at [www.flra.gov](http://www.flra.gov) (although, as discussed in paragraph (b)(1)(v) of this

section, you are permitted to file electronically on Saturdays, Sundays, or federal legal holidays). See § 2429.22 for rules regarding how to calculate your due date if you are entitled to an additional 5 days.

(2) *Agreement-bar exception.* If you are filing a petition in an agreement-bar situation under 5 CFR 2422.12(c), (d), (e), and (f), then, as discussed further in those regulations, you must file a petition no later than 60 days before the expiration date of the existing collective-bargaining agreement (“the 60-day date”). The first day (“day one”) of the period is the day before, not the day on which, the collective-bargaining agreement expires. Start with day one, and count back on the calendar from that day, including Saturdays, Sundays, and federal legal holidays. If the 60<sup>th</sup> day falls on a Saturday, Sunday, or federal legal holiday, then you must file your petition by the close of business on the last official workday that comes before, not after, that Saturday, Sunday, or federal legal holiday.

(3) *Exception for filing periods that are 7 days or less.* If your filing period is 7 days or less, then determine the act, event, or default that you are filing in response to (“the triggering event”). Find the first day after the triggering event that is not a Saturday, Sunday, or federal legal holiday. Start counting the 7-day period on (and including) that day, but exclude any Saturdays, Sundays, or federal legal holidays. The 7<sup>th</sup> day is the due date for filing.

(b) *How the FLRA determines the date on which documents have been filed.* The FLRA applies the following rules in determining the date on which a party has filed documents.

(1) *General rules.* Except in the situations discussed in paragraph (b)(2) of this section, the FLRA looks to the method by which documents have been filed in order to determine the date on which those documents have been filed. Specifically:

(i) *Documents filed with the FLRA by first-class mail.* If the mailing contains a legible postmark date, then that date is the date of filing. If the mailing does not contain a legible postmark date, then the FLRA presumes that it was filed 5 days prior to the date on which the appropriate FLRA component, officer, or agent receives it.

(ii) *Documents filed with the FLRA by facsimile (“fax”).* If the date of transmission on a fax is clear, then that date is the filing date. If the date of transmission on a fax is not clear, then the date of filing is the date on which the appropriate FLRA component, officer, or agent receives the fax.

(iii) *Documents filed with the FLRA by personal delivery.* The date of filing is the date on which the appropriate FLRA component, officer, or agent receives the filing.

(iv) *Documents filed with the FLRA by deposit with a commercial-delivery service that provides a record showing the date of deposit.* The date of filing is the date of deposit with the commercial-delivery service.

(v) *Documents filed electronically through use of the eFiling system on the FLRA’s Web site at [www.flra.gov](http://www.flra.gov).* The date of filing is the calendar day (including Saturdays, Sundays, and federal legal holidays) on which the document is transmitted in the eFiling system. Although documents that are filed electronically may be filed on Saturdays, Sundays, and federal legal holidays, they are not required to be filed on such days, as discussed in paragraph (a)(1)(v) of this section.

(2) *Exceptions.* The rules in paragraph (b)(1) of this section do not apply to filing an unfair labor practice charge under 5 CFR part 2423, a representation petition under 5 CFR part 2422, and a request for an extension of time under § 2429.23(a). See those provisions for more information.

(c) *Compliance with § 2429.24.* All documents filed or required to be filed with the Authority must be filed in accordance with the rules set out in § 2429.24.

- 17. Section 2429.22 is revised to read as follows:

**§ 2429.22 Additional time for filing with the FLRA if you are filing in response to a document that has been served on you by first-class mail or commercial delivery.**

(a) *General rules.* Except as discussed in paragraphs (b), (c), (d), and (e) of this section, apply the following rules if and only if you are filing a document with the FLRA in response to a document that has been served on you by first-class mail or commercial delivery. First, look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine what normally would be your due date. Second, starting with the next calendar day, which will be day one, count forward on the calendar, including Saturdays, Sundays, and federal legal holidays, until you reach day five. If day five is not a Saturday, Sunday, or federal legal holiday, then your filing is due with the FLRA on that day. If day five is a Saturday, Sunday, or federal legal holiday, then find the next calendar day that is not a Saturday, Sunday, or federal legal holiday; your filing is due with the FLRA on that day.

(b) *Rules that apply when you have been served by more than one method.* If someone has served you with a document using more than one method of service, then, as a general rule, the first method of service is controlling for purposes of determining your due date for filing with the FLRA. For example, if someone serves you with a document by first-class mail or commercial delivery on one day, and then serves you by some other method (such as electronic mail) the next day, then you may add 5 days to your due date, as described in paragraph (a) of this section. But if someone serves you with a document one day by any method *other than* first-class mail or commercial delivery, and *later* serves you with the document by first-class mail or commercial delivery, then you may not add 5 days to your due date; rather, you must look to § 2429.21(a)(1) and apply steps 1 through 5 of that section in order to determine your due date. Also, if someone

serves you by first-class mail or commercial delivery on one day, and by any other method on the same day, then you may not add 5 days – even if the first-class mail was postmarked or the time of deposit with the commercial-delivery service was earlier in the day than the time at which the other method of service was effected.

(c) *Exception for applications for review filed under 5 CFR 2422.31.* You do not get an additional 5 days to file an application for review of a Regional Director’s Decision and Order under 5 CFR 2422.31, regardless of the method of service of that Decision and Order.

(d) *Exception where extension of time has been granted.* You do not get an additional 5 days in any instance where an extension of time already has been granted.

(e) *Rules that apply to exceptions to arbitration awards.* For specific rules that apply to filing exceptions to arbitration awards, *see* 5 CFR 2425.2(c).

- 18. Section 2429.24 is amended by revising paragraphs (a), (e), (f), (g), (h), and (i), and adding new paragraphs (j) and (k), to read as follows:

**§ 2429.24 Place and method of filing; acknowledgement.**

(a) Except for documents that are filed electronically through use of the eFiling system on the FLRA’s Web site at [www.flra.gov](http://www.flra.gov), anyone who files a document with the Authority (as distinguished from the General Counsel, a Regional Director, or an Administrative Law Judge) must file that document with the Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street, N.W., Washington, DC 20424–0001 (telephone: (202) 218–7740) between 9 a.m. and 5 p.m. Eastern Time (“E.T.”), Monday through Friday (except federal holidays). If you file documents by hand delivery, then you must present those documents in the Docket Room no later than 5 p.m. E.T., if you want the Authority to accept those documents for filing on that day. If you file documents electronically through use

of the FLRA’s eFiling system, then you may file those documents on any calendar day – including Saturdays, Sundays, and federal legal holidays – and the Authority will consider those documents filed on a particular day if you file them no later than midnight E.T. on that day. Note, however, that although you may eFile documents on Saturdays, Sundays, and federal legal documents, you are not required to do so. Also note that you may *not* file documents with the Authority by electronic mail (“e-mail”).

\* \* \* \* \*

(e) Except as discussed in paragraphs (f) and (g) of this section, if you are filing documents with the FLRA, then you must file them in person, by commercial delivery, by first-class mail, or by certified mail.

(f) As an alternative to the filing methods discussed in paragraph (e) of this section, you may file the following documents, and only the following documents, electronically through use of the eFiling system on the FLRA’s website at [www.flra.gov](http://www.flra.gov):

- (1) Applications for review under 5 CFR 2422.31(a) through (c);
- (2) Oppositions to applications for review under 5 CFR 2422.31(d);
- (3) Exceptions to Administrative Law Judges’ decisions under 5 CFR 2423.40(a);
- (4) Oppositions to exceptions to Administrative Law Judges’ decisions under 5 CFR 2423.40(b);
- (5) Cross-exceptions under 5 CFR 2423.40(b);
- (6) Exclusive representatives’ petitions for review under 5 CFR 2424.22;
- (7) Agency statements of position under 5 CFR 2424.24;
- (8) Exclusive representatives’ responses under 5 CFR 2424.25;
- (9) Agency replies under 5 CFR 2424.26;
- (10) Exceptions to arbitration awards under 5 CFR part 2425; and

(11) Oppositions to exceptions to arbitration awards under 5 CFR part 2425.

(g) As another alternative to the methods of filing described in paragraph (e) of this section, you may file the following documents by facsimile (“fax”), so long as fax equipment is available and your entire, individual filing does not exceed 10 pages in total length, with normal margins and font sizes. You may file only the following documents by fax under this paragraph (g):

(1) Motions;

(2) Information pertaining to prehearing disclosure, conferences, orders, or hearing dates, times, and locations;

(3) Information pertaining to subpoenas; and

(4) Other matters that are similar to those in paragraphs (g)(1) through (3) of this section.

(h) You must legibly print, type, or otherwise duplicate any documents that you file under this section. For purposes of documents that are filed electronically through use of the FLRA’s eFiling system under paragraph (f) of this section, “legibly . . . duplicated” means that documents that you upload as attachments into the eFiling system must be legible.

(i) Documents, including correspondence, in any proceedings under this subchapter must show the title of the proceeding and the case number, if any.

(j) Except for documents that are filed electronically through use of the FLRA’s eFiling system, the original of each document required to be filed under this subchapter must be signed by either the filing party or that party’s attorney, other representative of record, or officer, and also must contain the address and telephone number of the person who signs the document. Documents that are filed electronically using the FLRA’s eFiling system must contain the mailing address, e-mail address, and telephone number of the individual who files the document, but not that individual’s signature.

(k) A return postal receipt may serve as acknowledgement that the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer has received a filed document.

Otherwise, the FLRA will acknowledge receipt of filed documents only if the filing party:

- (1) Asks the receiving FLRA officer to do so;
- (2) Includes an extra copy of the document or the letter to which the document is attached, which the receiving FLRA office will date-stamp and return to the filing party; and
- (3) For returns that are to be sent by mail, includes a self-addressed, stamped envelope.

- 19. Section 2429.25 is revised to read as follows:

**§ 2429.25 Number of copies and paper size.**

(a) *General rule.* Except as discussed in paragraph (b) of this section, and unless you use an FLRA-prescribed form, any document that you file with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, including any attachments, must be on 8½ by 11 inch size paper, using normal margins and font sizes. You must file an original as well as four (4) legible copies of each document, for a total of five (5) documents. You may substitute for the original document a clean copy of that document, so long as the copy is capable of being used as an original for purposes such as further reproduction.

(b) *Exceptions.* You are not required to comply with paragraph (a) of this section if and only if:

- (1) You file documents by facsimile transmission under § 2429.24(g), in which case you are required to file only one (1) legible copy that is capable of being reproduced;
- (2) You file documents electronically through use of the FLRA's eFiling system;
- (3) The Authority or the General Counsel, or their designated representatives, allow you not to comply; or
- (4) Another provision of this subchapter allows you not to comply.

- 20. Section 2429.27 is amended by revising paragraphs (b), (c), and (d) to read as follows:

**§ 2429.27 Service; statement of service.**

\* \* \* \* \*

(b) If you are serving a document under paragraph (a) of this section, then you must use one of the following methods of service:

(1) Certified mail;

(2) First-class mail;

(3) Commercial delivery;

(4) In-person delivery;

(5) Facsimile (“fax”) service, but only for the types of documents listed in § 2429.24(g) and only where fax equipment is available; or

(6) Electronic mail (“e-mail”), but only when the receiving party has agreed to be served by e-mail.

(c) If you serve a document under this section, then you must file, with the appropriate FLRA office, a statement indicating that the party has served that document (a “statement of service”).

If you are filing documents electronically using the FLRA’s eFiling system, then you must certify, in the FLRA’s eFiling system and at the time of filing, that you have served copies of the filing and any supporting documents on the appropriate individual(s) specified in paragraph (a) of this section. Regardless of how you file a statement of service with the FLRA, you must ensure that your statement of service includes the names of the parties and persons that you served, their addresses, the date on which you served them, the nature of the document(s) that you served, and the manner in which you served the parties or persons that you served. You

must also sign and date the statement of service, unless you are using the FLRA's eFiling system.

(d) Date of service. For any documents that you serve under this section, the date of service depends on the manner in which you serve the documents. Specifically, the date of service shall be the date on which you have: deposited the served documents in the U.S. mail; delivered them in person; deposited them with a commercial-delivery service that will provide a record showing the date on which the document was tendered to the delivery service; transmitted them by fax (where allowed under paragraph (b)(5) of this section); or transmitted them by e-mail (where allowed under paragraph (b)(6) of this section).

- 21. Section 2429.29 is revised to read as follows:

**§ 2429.29 Content of filings.**

With one exception, if you file any document with the Authority or the Office of Administrative Law Judges in a proceeding covered by this subchapter – including any briefs that you upload into the FLRA's eFiling system as attachments – and that document exceeds 10 double-spaced pages in length, then you must ensure that the document includes a table of contents. The one exception is that, if you use the fillable forms in the FLRA's eFiling system, then you are not required to submit a table of contents to accompany the fillable forms.

Dated: May 1, 2012

Carol Waller Pope  
Chairman

